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FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 UNITED STATES OF AMERICA,) No. CR 06-0265 MHP
14 Plaintiff,)
15 v.) PLEA AGREEMENT
16 CHRISTOPHER JOSEPH MCDONALD,)
17 Defendant.)

18
19 I, CHRISTOPHER JOSEPH MCDONALD, and the United States Attorney's Office for
20 the Northern District of California, and the Fraud Section of the Criminal Division of the Untied
21 States Department of Justice, (hereafter "the Government") enter into this written plea agreement
22 (the "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the sole count in the above-captioned information,
25 charging me with conspiracy to manipulate the price of a commodity in interstate commerce, in
26 violation of 18 U.S.C. § 371. I agree that the elements of the offense and the maximum penalties
27 are as follows:

28
PLEA AGREEMENT
CR 06-0265 MHP

1 Elements:

- 2 (1) Beginning on or about July 1, 2000, and ending on or about November 1, 2000,
3 there was an agreement between two or more persons to manipulate the price of a
4 commodity in interstate commerce in violation of 7 U.S.C. § 13(a)(2); and
- 5 (2) I became a member of the conspiracy knowing of at least one of its objects and
6 intending to help accomplish it; and
- 7 (3) One of the members of the conspiracy committed at least one overt act for the
8 purpose of carrying out the conspiracy to manipulate the price of a commodity in
9 interstate commerce.

10 Penalties

- 11 (a) Maximum prison sentence: 5 years
12 (b) Maximum fine: \$ 250,000
13 (C) Maximum supervised release term: 3 years
14 (d) Mandatory special assessment: \$100
15 (e) Restitution: Up to the amount of the loss

16 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that
17 the following facts are true:

18 Background

19 Mirant was an energy company based in Atlanta, Georgia, involved in both power
20 generation and the marketing of energy products. Mirant engaged in the buying and selling of
21 energy-linked commodities including natural gas. Cinergy Corporation ("Cinergy") is an energy
22 company located in Cincinnati, Ohio, and provides natural gas and electricity to Ohio, Indiana,
23 and Kentucky.

24 Mirant and Cinergy each had a natural gas trading group with three primary goals: (1) to
25 ensure physical delivery of natural gas and electricity to customers; (2) to hedge against adverse
26 price fluctuations in the market; and (3) to take speculative positions that involve more risk but

1 have the potential to generate higher profits. To achieve these goals, traders work with both
2 physical and financial trades. Physical trades call for the delivery of natural gas to specific
3 locations. In contrast, financial trades generally are entered into without either party to the
4 transaction intending to take delivery of any natural gas. Financial trades can be entered on the
5 New York Mercantile Exchange (called futures contracts) or off-exchange directly between
6 companies (called forward contracts). Financial trades can be used both to speculate and to
7 hedge against price risk in the physical markets. Regardless of the type of transaction, the
8 counter-parties can agree to any price, but often contract prices are tied to published index prices,
9 described below. Both monthly and daily indices are published by a number of different industry
10 newsletters. Monthly indices are published by Inside FERC's Gas Market Report ("Inside
11 FERC"), and other publications, on the first business day each month. Natural gas prices are
12 published for dozens of locations throughout the United States where physical natural gas can be
13 purchased and sold. The publications calculate the monthly index prices using trade data they
14 collect from natural gas traders during the last week of the month. In the natural gas industry, the
15 last week of the month is called "bid week."

16 During 2000, I was a supervisor on the natural gas trading floor for Mirant. As a
17 supervisor of basis trading at Mirant in 2000, I was responsible for overseeing the buying and
18 selling of natural gas products to take advantage of the difference between the price of a physical
19 natural gas contract at a particular location and the price of a standard "Natural Gas" contract
20 traded on the New York Mercantile Exchange. During my employment at Mirant, both basis and
21 physical traders reported baseload transactions to the index publications, including Inside FERC,
22 that the indices used in calculating index prices.

23 Manipulation of Natural Gas Index Prices

24 I understand and agree that natural gas is a commodity as defined in Title 7, United States
25 Code, Section 1a(4), and that natural gas flows through pipelines that cross state lines, thereby
26 affecting interstate commerce. As a trading supervisor for Mirant, I was responsible for
27 overseeing the reporting of trades negotiated during bid week for locations at which Mirant
28 traders had placed trades to Inside FERC for its use in calculating the first of month index.

Beginning on or about July 1, 2000, and continuing until on or about November 1, 2000, I
1 conspired with others at Mirant and Cinergy to report through the means of interstate commerce
2 fictitious trades to Inside FERC. When I conspired with others to report fictitious trades to Inside
3 FERC, I attempted to skew the published index prices in the direction that would result in a
4 benefit to Mirant and/or Cinergy's natural gas positions. Between approximately July 1, 2000
5 and November 1, 2000, I also conspired with traders at Mirant and Cinergy to list our companies
6 as counter-parties to the reported false trades in order to elude questioning by Inside FERC's
7 editors about the fictitious transactions. Together, we agreed on the direction in which we
8 wanted to move the published index price of gas at several trading locations in order to benefit
9 the value and/or profitability of Cinergy and/or Mirant's natural gas positions in the market.
10

3. I agree to give up all rights that I would have if I chose to proceed to trial,
11 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
12 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
13 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
14 to pursue any affirmative defenses and present evidence. I waive any venue defenses that I might
15 have in this case, and I consent to the disposition of the case in the Northern District of
16 California.
17

4. I agree to give up my right to appeal my conviction, the judgment, and orders of
18 the Court. I also agree to waive any right I may have to appeal my sentence. As to any matter in
19 which I am cooperating with the government pursuant to this agreement, I waive any right I may
20 have to assert the attorney-client privilege to decline to answer questions relating to
21 communications with counsel for any other defendant including a defendant acting pro se, except
22 as to communications where counsel for the other defendant was my attorney of record. I also
23 waive my right to conflict-free representation by any attorney or pro se defendant where a
24 conflict arises from that attorney's or defendant's participation in a joint defense agreement to
25 which I also was a party.
26

5. I agree not to file any collateral attack on my conviction or sentence, including a
27 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
28

that my constitutional right to the effective assistance of counsel was violated.

1 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
2 entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that the
3 government may withdraw from this agreement if the Court does not accept the agreed upon
4 sentence set out below.
5

6 7. I understand that the Court, while not bound to apply the Guidelines, must consult
7 those Guidelines and take them into account when sentencing. I also agree that the Sentencing
8 Guidelines range will be calculated as follows and that I will not ask for any other adjustment to
9 or reduction in the offense level or for a downward departure from the Guidelines range:

10 (1) Base Offense Level, U.S.S.G. § 2F1.1(a):

6

11 [The parties agree that, in light of *ex post facto* issues (see U.S.S.G. §
12 1B1.11(b)(1)), the Court should use the Sentencing Guidelines in effect as of
November 1, 2000.]

13 (2) Loss, U.S.S.G. § 2F1.1(b)(1)(K):

+10

15 [The parties agree that the amount of loss the government could prove is
16 \$700,000. This figure is based on an analysis of data gathered from entities who
17 traded at the three locations for which the defendant provided false trading
information during the period of the conspiracy.]

18 (3) More than minimal planning, U.S.S.G. § 2F1.1(b)(2)(A):

+2

19 (4) Acceptance of responsibility:

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(If I meet the requirements of U.S.S.G. § 3E1.1)

21 (5) Adjusted offense level:

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23 8. I agree that a reasonable and appropriate disposition of this case, in the event the
24 Government does not move for a departure pursuant to U.S.S.G. § 5K1.1, would be a sentence at
25 the low end of the Sentencing Guidelines Range, including a sentence of eighteen months'
26 imprisonment, followed by a term of three years supervised release.

27 9. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution

I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the
1 Government, or the U.S. Probation Office, provide accurate and complete financial information,
2 submit sworn statements and give depositions under oath concerning my assets and my ability to
3 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my
4 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at
5 the time of sentencing.

6 10. I agree to cooperate with the Government before and after I am sentenced. My
7 cooperation will include, but will not be limited to, the following:

- 9 a. I will respond truthfully and completely to any and all questions put to me, whether in interviews, before a grand jury or at any trial or other proceeding;
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- 11 b. I will provide all documents and other material asked for by the government;
- 12
- 13 c. I will testify truthfully at any grand jury, court or other proceeding as requested by the government;
- 14
- 15 d. I will surrender any and all assets acquired or obtained directly or indirectly as a result of my illegal conduct;
- 16
- 17 e. I will request continuances of my sentencing date, as necessary, until my cooperation is completed;
- 18
- 19 f. I will tell the government about any contacts I may have with any co-defendants or subjects of investigation, or their attorneys or individuals employed by their attorney; and
- 20
- 21 g. I will not reveal my cooperation, or any information related to it, to anyone without prior consent of the government.

22 11. I agree that the government's decision whether to file a motion pursuant to
23 U.S.S.G. § 5K1.1, as described in the government promises section below, is based on its sole
24 and exclusive decision of whether I have provided substantial assistance and that decision will be
25 binding on me. I understand that the government's decision whether to file such a motion, or the extent of the departure recommended by any motion, will not depend on whether convictions are
26 obtained in any case. I also understand that the Court will not be bound by any recommendation
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made by the government.

1 12. I agree not to commit or attempt to commit any crimes before sentence is imposed
2 of before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
3 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
4 Services, or the government; or fail to comply with any of the other promises I have made in this
5 Agreement. I agree that, if I fail to comply with any promises I have made in the Agreement,
6 then the government will be released from all of its promises, but I will not be released from my
7 guilty plea.

8 13. If I am prosecuted after failing to comply with any promises I made in this
9 Agreement, then (a) I agree that any statements I made to any law enforcement or other
10 government agency or in Court, whether or not made pursuant to the cooperation provisions of
11 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
12 Constitution, Rule 11 (f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
13 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
14 statements, or any leads derived from those statements; and (C) I waive any defense to any
15 prosecution that it is barred by a statute of limitations, if the limitations period has run between
16 the date of this Agreement and the date I am indicted.

17 14. I agree that this Agreement contains all of the promises and agreements between
18 the government and me, and I will not claim otherwise in the future.

19 15. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
20 District of California and the Fraud Section of the Criminal Division of the United States
21 Department of Justice only, and does not bind any other federal, state, or local agency.

22 The Government's Promises

23 16. The government agrees to move to dismiss any open charges pending against the
24 defendant at the time of sentencing.

25 17. The government agrees not to file or seek any additional charges against the
26 defendant that could be filed as a result of the investigation that led to the pending information.

1 The government may, however, provide the defendant's statements to, or require the defendant to
2 submit to an interview by, any federal or state agency or require him to provide testimony in any
3 federal or state proceeding, as long as his statements may not be used against him. The
4 government may also inform the Court and Probation about the full extent of defendant's
5 criminal activities.

6 18. The government agrees not to use any statements made by the defendant pursuant
7 to this Agreement against him, unless the defendant fails to comply with any promises in this
8 Agreement.

9 19. Based on the information now known to it, the government will not oppose a
10 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

11 20. The government agrees that, should it file no motion under U.S.S.G. § 5K1.1, the
12 reasonable and appropriate sentence in this case should be as set forth in paragraph 8 above,
13 unless the defendant violates the Agreement as set forth in paragraph 12 above or fails to accept
14 responsibility.

15 21. If, in its sole and exclusive judgment, the government decides that the defendant
16 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
17 within the meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this Agreement, it
18 will file with the Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that explains the nature
19 and extent of the defendant's cooperation and recommends a downward departure below the
20 sentence agreed upon by the parties in paragraph 8 above.

21 The Defendant's Affirmations

22 22. I confirm that I have had adequate time to discuss this case, the evidence, and this
23 Agreement with my attorney, and that he has provided me with all the legal advice that I
24 requested.

25 23. I confirm that while I considered signing this Agreement and, at the time I signed
26 it, I was not under the influence of any alcohol, drug, or medicine.

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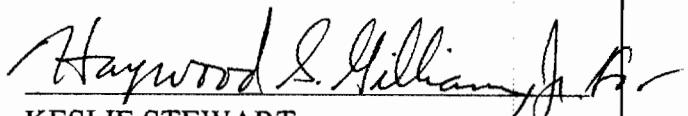
24. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: 6/19/06


CHRISTOPHER JOSEPH MCDONALD
Defendant

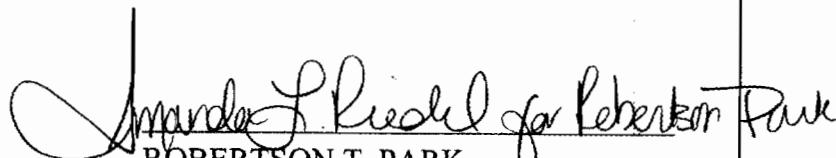
KEVIN V. RYAN
United States Attorney

Dated: 6/19/06


HAYWOOD S. WILLIAMS, JR.
KESLIE STEWART
Assistant United States Attorney

PAUL PELLETIER
Acting Chief, Fraud Section
Criminal Division
U.S. Department of Justice

Dated:


ROBERTSON T. PARK
AMANDA L. RIEDEL
Assistant Chief, Fraud Section

AMANDA L. RIEDEL
Trial Attorney, Fraud Section

I have fully explained to my client all the rights that a criminal defendant has and all the
1 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
2 and all the rights he is giving up by pleading guilty, and, based on the information now known to
3 me, his decision to plead guilty is knowing and voluntary.
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5
6 Dated: 6/19/66
7



8 WILLIAM GOODMAN
9 Attorney for Defendant
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